Administrative Office of the Courts

Chief Justice Christine M. Durham
Utah Supreme Court
Chair, Utah Judicial Council

Daniel J. Becker
State Court Administrator
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MEMORANDUM

To: Julia D'Alesandro, Audit Department

From: Brent Johnson, General Counsel

Re: Closing Cases as Unable to Locate

Date: November 6, 2003

This memorandum is in response to your request for clarification on a justice court practice of "closing" cases when the defendant cannot be located or resides out of the state. As stated in your e-mail, the court "closes" cases when it appears that the court will be unable to locate a defendant, often because the defendant resides out of state. According to your e-mail, the court clerk closes the cases by noting such closure on the docket. The clerk then zeros-out any money that is owed and the case is typically shredded after one year. The court will close all types of cases in this manner, regardless of whether the case is a mandatory appearance.

As outlined in your e-mail, the closure practice cannot continue as it has in the past. If this were truly a situation in which the cases were simply closed, the court clerk could handle the closures. However, it is evident from the fact situation that these cases are not simply being closed, but are, in fact, being dismissed. Because the cases are being dismissed, a different procedure must be followed.

There are many courts which administratively close cases after a certain period of inactivity. However, the closure in that situation is simply an act of taking the case off a pending case list. When a case is administratively closed, the case simply sits dormant and can be reactivated at any time. In most situations, a warrant may still be outstanding on the case, even though the case is no longer on the court's pending list. Any outstanding amounts remain owing, and can be collected at anytime. Again, closure in this circumstance is simply a process of taking the case off the court's active list.

If a court chooses to administratively close cases in this manner, there should at least be an information filed. If an information is not filed, the statute of limitations on criminal matters may

ultimately prevent the prosecutor and court from pursuing a case. If an information is filed, the case can be pursued indefinitely, subject only to a defendant's right to a speedy trial. In the ideal situation, when a defendant cannot be located, the prosecutor would file an information, the court would issue a warrant, and the case could then remain dormant until the defendant is located.

In order to resolve or otherwise dispose of cases that are not administratively closed, we have two court rules which govern dismissals. Rule 25 of the Utah Rules of Criminal Procedure allows a court to dismiss a case upon the motion of the prosecutor or upon its own motion. If the court chooses to dismiss cases using this rule, the court would need to provide notice of its intent to dismiss cases to the prosecutor and provide the prosecutor with an opportunity to object to the dismissal. Also, the dismissal could not be done at the clerk's discretion, but could only be ordered by the judge. The court would need to maintain documentation that this process had been followed.

Rule 4-703 of the Utah Code of Judicial Administration was enacted specifically for the purpose of allowing courts to manage their caseloads and dismiss cases that have been inactive for a certain period of time. The rule allows the court clerk to identify outstanding citations and warrants "which were issued at least one year prior to the requested dismissal date." The clerk then prepares an order to show cause and sends notice to the prosecutor that the cases will be dismissed unless the prosecutor can show cause why any or all of the cases should not be dismissed. The court sets a specific date for the prosecutor to respond. If the prosecutor does not respond by the set date then the court issues an order for dismissal. When the clerk prepares the order to show cause for the prosecutor, the clerk will typically attach a list of cases to the order to show cause. When the court issues an order of dismissal, the same, or modified, list can be attached to the order. In other words, a blanket order to show cause and a blanket order can be done by the court. The court does not need to prepare an order to show cause and an order for each individual case. However, the court clerk cannot be the one who dismisses the cases. The clerk identifies the cases for the prosecutor and judge, who agree to and order dismissal.

I would recommend that the court that is "closing" cases in the manner that you have described follow Rule 4-703 and dismiss the cases instead. Prior to dismissing the cases, they may want to give the cases a little more time. As noted by the rule, the court should give each case at least a year, with an active warrant, before the case is dismissed. Most courts will allow their citations and warrants to remain outstanding for several years, before they choose to dismiss.

If you have any questions about this matter, please let me know.